In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1011

WARREN RUDOLPH COOPER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted of conspiracy to distribute heroin, in violation of 21 U.S.C. 846. He was sentenced to imprisonment for fifteen years. The court of appeals affirmed. He challenges the venue and the admission of testimony regarding statements made by his co-conspirator.

In April 1971, narcotics agent Hall, under a pseudonym, was introduced to petitioner's co-conspirator Stanard (Tr. 61).[1] Between April and July 1971, Stanard sold Hall narcotics on two occasions in the District of Columbia (Tr. 25). On July 12, agent Hall called Stanard and

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[1] Stanard, who had pled guilty to a reduced charge (Tr. 6), testified for the government.

arranged to meet him at the Marriott Motel in Arlington, Virginia. At this meeting, Hall told Stanard that he wanted to buy an eighth of a kilo of heroin. He also told Stanard that he knew Stanard was tied up with petitioner and another individual. Stanard acknowledged that petitioner was his "man", *i.e.*, his source for heroin. Stanard left Hall for a few moments, saying he was going to call his man (Tr. 8-9, 62-66).

Stanard called petitioner and then went to meet him at a liquor store in the District of Columbia. He told petitioner that he wanted to buy an "eighth," and that he had a cash sale for it. Petitioner agreed and told Stanard that he would call him at home that evening. When petitioner called, he told Stanard to meet him at a designated street corner in northwest Washington (Tr. 9-12). Stanard then called agent Hall and told him that he could get the "eighth" and that the price would be $3,800, a figure that had been agreed upon between Stanard and petitioner (Tr. 16). Stanard drove his car to the appointed place and parked. Shortly thereafter, petitioner came to the car, left a package on the seat, and told Stanard he would see him later (Tr. 12-13, 95-99, 104-105). Stanard delivered the package to agent Hall near the Marriott Motel, where Hall gave him $3,500, promising to pay the balance the next day (Tr. 15-17, 68). Stanard took the $3,500 to petitioner at a liquor store in Washington and discussed the shortage with him (Tr. 17). The contents of the package delivered by Stanard to Hall was 151.52 grams of a substance which was 20.57% heroin (Tr. 69-70, 112-114).

On the following day, agent Hall met Stanard at the Marriott Motel and gave him the promised $300. Stanard told Hall that petitioner had given him the "green light" and that he could supply an eighth of a kilo for him at any time he wanted it (Tr. 72).

Petitioner contends that there was no evidence to show that he engaged in a conspiracy apart from hearsay statements of his co-conspirator. But, as described above, the record shows that there was direct testimony as to petitioner's participation in the conspiracy, including his own acts and words. He furnished the narcotics to Stanard for delivery to Hall, established the price to be paid for them, and thereafter received $3,500 of the promised $3,800 purchase price. The in-court testimony was sufficient evidence of the existence of a conspiracy to make admissible both the testimony of agent Hall that Stanard had said that petitioner was his source and Hall's testimony that Stanard told him petitioner "had given him the green light" and could supply an eighth of a kilo of heroin whenever Hall wanted it. See *Glasser* v. *United States*, 315 U.S. 60, 74. Both statements were in furtherance of the agreement between petitioner and Stanard to commit the unlawful act of selling heroin to Hall.

Venue was properly laid in the Eastern District of Virginia, where the overt acts of planning the transaction and subsequent delivery of the narcotics and payment took place. See 18 U.S.C. 3237(a); Fed.R.Crim.P., Rule 18.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.